

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9820 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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KALUBHAI CHAMARBHAI CHAUDHARY

Versus

DEPUTY CONSERVATOR OF FORESTS

Appearance:

MR JAYANT PATEL for Petitioners

Ms AMY YAGNIK, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/02/99

ORAL JUDGEMENT

Rule. Ms Amy Yagnik, as instructed by Mr P.S.

Patel, appears and waives service of Rule on behalf of the respondents.

2. In this petition under Article 226 of the Constitution, the petitioners have prayed for a writ directing the Deputy Conservator of Forest, South Dangs Division at Ahwa, District Dangs, the Range Forest Officer at Chikli, Taluka Ahwa, District Dangs and the District Collector, Dangs to regularize the petitioners' possession qua the agricultural land admeasuring 1

Hectare of Revenue Survey No. 60/1 situated at village Chikar, Taluka Ahwa, District Dangs. The petitioners have also prayed that the order dated 26.11.1997 (Annexure "A" to the petition) rejecting the petitioners' application for regularization be quashed.

3. By the impugned decision dated 26.11.1997 (Annexure "A") the Deputy Conservator of Forests, respondent No. 1 herein, has conveyed the decision of the Committee constituted under the Government Resolution dated 6.10.1992 for considering the applications for regularizing possession of tribals over those lands which were being cultivated by them prior to 25.10.1980 when the Conservation of Forests Act, 1980 came into force. The State Government, therefore, passed the resolution dated 6.10.1992 constituting the committee headed by the Collector of District Dangs to consider whether the applicants for regularization could show their possession and cultivation the land prior to 25.10.1980. Certain eligibility criteria have been laid down in para 1 of the resolution. One of those criteria is that the applicant for regularization can at the most have 8 Acres of land regularized and that 8 Acres would include the land owned by the applicant on his own or any land for which regularization orders might have been passed earlier by the Forest department. By the impugned communication the petitioners were informed that since the petitioners had their own holding of more than 8 Acres, the petitioners' application could not be granted. Petitioner No. 1 thereupon submitted a representation dated 20.3.1998 informing respondent No. 1 that the petitioner himself did not have 8 Acres of land because he was only one of the 14 co-owners in the land bearing Khata No. 12 admeasuring 3-89 Hectares and RAs. and that, therefore, the petitioner's individual share in the said land would work out to only 0-62 RAs. i.e. about 1.5 Acres. It appears from the petition that the holding of petitioner No. 2 is 0.66 Hectare. The learned counsel for the petitioners, therefore, submits that the authority erred in rejecting the application of petitioner No. 1 for regularization without considering the fact that the petitioner was only one of the co-owners and not the exclusive owner of the land in question.

4. The learned counsel for the respondents on the other hand has submitted that since the petitioners had not produced the extract from the village revenue record, the Committee had to proceed on the basis that petitioner No. 1 were the owner of the land in question and, therefore, the decision was justified.

5. Having heard the learned counsel for the parties, it appears to the Court that although the petitioners did not produce the relevant revenue entry before the Committee, the petitioners did produce the same before respondent No.1 on 20.3.1998 and in any view of the matter, the same material could again have been placed before the Committee. The Committee in question is discharging administrative function and it is not a judicial body that it would be prevented from reviewing its own decision.

6. In above view of the matter, the petition is allowed. The impugned decision dated 26.11.1997 (Annexure "A" to the petition) is quashed and set aside and the respondents are directed to place the representation dated 20.3.1998 (Annexure "D") before the Committee constituted under the Government Resolution dated 6.10.1992 for reconsidering the application for regularization and take decision thereon within four months from the date of receipt of a certified copy of this order. Before taking any final decision in the matter, the Committee shall give the petitioners an opportunity of being heard and also to produce any further material which the petitioners may desire to produce in support of their case.

7. Since the matter is remanded to the Committee for reconsidering the petitioners' application, the ad-interim relief granted earlier by this Court while issuing notice, shall continue till the Committee takes its decision and in case the decision is adverse to the petitioners, the ad-interim relief shall continue for a period of 3 weeks from the date of communication of the decision to the petitioners.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

February 12, 1999 (M.S. Shah, J.)

sundar/-